

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 14.10.2019

RSA-2316 of 1993 (O&M)

State of Punjab and others

---Appellants

vs.

Constable Sarwan Singh through Lrs

---Respondent

C.R.No. 3482 of 2014 (O&M)

Constable Sarwan Singh

---Petitioner

vs.

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Monica Chhibber Sharma, Sr. DAG, Punjab
for the appellants in RSA- 2316 of 1993
for the respondent in CR- 3482 of 2014
Mr. Manu K.Bhandari, Advocate
for the petitioner in CR No. 3482 of 2014
for the respondent in RSA-2316 of 1993

Rekha Mittal, J.

CM No. 11410-C of 2019 in RSA-2316 of 1993

Prayer in this application is for impleading legal representatives of Baldev Singh respondent No. 1(i)(since deceased).

In view of averments made in the application supported by an affidavit of Manvinderjeet Singh, one of the legal heirs and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 3 of the application are allowed to be brought on record as legal representatives of Baldev Singh respondent No. 1

(i) (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

CM No. 12476-C of 2019 in RSA-2316 of 1993

Prayer in this application is for impleading legal representatives of Harinder Kaur respondent No. 1(ii)(since deceased).

In view of averments made in the application supported by an affidavit of Jaspreet Kaur, one of the legal heirs and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 3 of the application are allowed to be brought on record as legal representatives of Harinder Kaur respondent No. 1(ii) (since deceased), for the purpose of present lis only, subject to just exceptions.

Amended Memo of Parties is taken on record.

Disposed of accordingly.

CM No. 11411-C of 2019 in RSA-2316 of 1993

Prayer in this application is for impleading legal representatives of Amardev Singh respondent No. 1(iii)(since deceased).

In view of averments made in the application supported by an affidavit of Shivjeet Singh, one of the legal heirs and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 3 of the application are allowed to be brought on record as legal representatives of Amardev Singh respondent No. 1(iii) (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly

Main case

This order will dispose of RSA No. 2316 of 1993 and Civil

Revision No. 3482 of 2014 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 2316 of 1993.

Challenge in the present appeal has been directed against decrees and judgments passed by the courts whereby suit for declaration to challenge order of dismissal from service passed by Sh. J.P.Virdi, Superintendent of Police (Headquarters) and that of DIG in appeal with consequential relief that respondent-plaintiff continues to be in service with all rights, benefits, privileges attached to the post as if dismissal order had never been passed was decreed by the Sub Judge Ist Class, Nabha Camp Patiala vide judgment and decree dated 19.4.1990 that came to be affirmed in appeal by the District Judge, Patiala, vide judgment and decree dated 1.6.1993.

The trial court decreed the suit to the following effect:-

“In view of my findings on various issues a decree of declaration that order of Shri J.P.Virdi, Supdt. of Police (Headquarters) and that of DIG in appeal dated 25.4.1984 and 29.9.1984 are illegal, null and void and plaintiff continues to be in service as Constable, is passed in favour of the plaintiff and against the defendants, with costs.”

Counsel for the appellant would inform that regular second appeal was decided by this Court vide judgment and decree dated 2.3.2007 whereby the appeal was allowed, judgments of the courts were set aside and suit of the respondent-plaintiff was dismissed. The respondent-plaintiff filed Special Leave Petition to Appeal before Hon'ble the Supreme Court

which was allowed to be withdrawn with liberty to the respondent to move the High Court by way of review petition. The review application of the respondent-plaintiff was allowed by this court vide order dated 19.12.2016.

A relevant extract therefrom, reads as follows:-

“Short question for consideration in the review application is in not considering the fact that Shri J.P.Virdi who was in the cadre of Additional Superintendent of Police and posting him as Superintendent of Police, empower him to act as appointing and disciplinary authority insofar as constable and head constable or not. It is evident that Shri. J.P.Virdi the then Superintendent of Police as on 25.4.1984 he was only Additional Superintendent of Police, therefore, he could not have exercised the quasi judicial function under the Punjab Police Rules, 1934 so as to impose penalty upon constable/review applicant. Hence, order dated 2.3.2007 is recalled. RSA No. 2316 is restored.”

The First Appellate Court dismissed the appeal filed by the appellants-State of Punjab, primarily on the following grounds:-

1. Sh. J.P.Virdi was not the Superintendent of Police, Patiala nor was officiating as In-charge of the District in place of Sh. N.S.Aulakh, the then Senior Superintendent of Police, Patiala, therefore, he was not competent/authorised to pass order of dismissal from service qua the respondent-plaintiff.
2. No such finding has been recorded in the dismissal order that conduct of the respondent is incorrigible or he is not fit

to be retained in service of the police department.

3. The department never told the plaintiff that his leave has not been sanctioned and as such he must have presumed that his request for extension of leave has been granted by the department and if he had reported for duty after availing of leave, he cannot be punished, that too, with punishment of dismissal from service.

4. The plaintiff had already served the department for more than 20 years and his services had been thrown in dustbin with one stroke of pen without having regard to length of service.

Counsel for the appellant would argue that reasons that weighed in the mind of First Appellate Court to dismiss the appeal cannot stand the test of judicial scrutiny. It is submitted that Sh.J.P.Virdi was Additional Superintendent of Police and he was duly competent to impose punishment of dismissal from service qua respondent, a constable at the relevant time. In support of her contentions, she has relied upon judgment of Hon'ble the Supreme Court **Union of India vs. Jagjit Singh AIR 1970 (SC) 122**. Further reference has been made to judgment of this Court **State of Punjab vs. Ram Sarup Constable 1985(2) SLR 369**. It is further argued that since the respondent-plaintiff absented from duty after getting three days leave sanctioned, any communication received from him for extension of leave is of no legal consequence because leave cannot be claimed as a matter of right. It is further argued that as the respondent was a member of disciplined force, absence from duty amounts to gravest misconduct for

which punishment of dismissal can be awarded. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **State of Punjab vs. Ram Singh Ex Constable 1992(3) SCT 448**. Further reference has been made to Division Bench judgments of this Court **Dhan Singh vs. State of Haryana and others 2008 (3) SCT 816, Amar Singh (Constable) vs. State of Punjab 2006(1) SCT 169** and Single Bench judgment of this Court **Manohar Lal vs. The State of Punjab and others 2009 (1) SCT 108**.

Counsel would argue that order of dismissal makes reference to various punishments including forfeiture of service imposed upon the delinquent official. It is further argued that in view of forfeiture of service for a period of more than 10 years, total qualifying service for the purpose of pension in the instant case is less than 10 years, therefore, consideration of right to pension of the delinquent will not be attracted in the given circumstances. In this context, reliance has been placed on judgment in **Amar Singh's case (supra)**.

Counsel representing the respondent-plaintiff has supported concurrent findings recorded by the courts with the submission that neither Sh. J.P.Virdi was competent to pass the impugned order of dismissal from service nor the order has been passed in compliance with the relevant provisions of Punjab Police Rules, 1934 (in short "the Rules"), reference whereof has been made in the judgments impugned.

I have heard counsel for the parties, perused the paper book and records.

The primary question for consideration is, whether Sh.

J.P.Virdi, Additional Superintendent of Police, Patiala was competent to pass the impugned order of dismissal from service when examined in the light of provisions of the Rules and Punjab Police Act.

The controversy raised by counsel for the appellants is no longer res integra and has been set at rest by Hon'ble the Supreme Court in **Ravinder Kumar Vs. State of Punjab and others Civil Appeal No. 1843 of 2007 decided on 16.11.2011**. The Apex Court framed substantial question of law, reads thus:-

“Whether in the State of Punjab, Additional Superintendent of Police can bring about dismissal of a police constable and not that dismissal can be brought about only by a Senior Superintendent of Police alone who is known in common parlance in the Districts as “District Superintendent of Police”?

By referring to the provisions of Rule 12.1 of the Rules in Chapter XII, Rule 16.1 of the Rules in Chapter XVI and judgments referred to therein, the Court has held in paras 21 to 24, quoted thus:-

“21. From perusal of the aforesaid Rules, it is crystal clear that when the appointing authority of the Appellant was Superintendent of Police, Gurdaspur, the punishment on him could not have been imposed by any other authority lower in rank.

22. Records further show that despite grant of several opportunities to the counsel for the State, he was not able to produce any Rule, Regulation or Authority, which could have equated Additional Superintendent of Police to that of the Superintendent of Police or had kept both of them at par.

23. In the light of the aforesaid discussion, the contrary view taken by learned Single Judge in the matter of Ram Sarup (supra) cannot be sustained in law and we have to hold that it has not been decided in accordance with law.

24. In our considered opinion, when admittedly the appointing authority of the Appellant was Superintendent of Police then he could not have been removed from service by any other authority, lesser in rank. Thus, the order of removal passed by Additional Superintendent of Police against the Appellate cannot be upheld in law. The same is hereby set aside.”

In view of authoritative enunciation in **Ravinder Kumar's case (supra)**, there is no escape from conclusion that Sh. J.P.Virdi, Additional Superintendent of Police, Patiala was not competent to dismiss the respondent from service, therefore, order of dismissal has rightly been set aside by the courts on this score. As Sh. J.P.Virdi was not competent to pass order of dismissal from service, adverting to other contentions whether order satisfies the requirements of rules relevant in the present context would be an exercise in futility at the cost of making the judgment lengthy. In this view of the matter, contention raised by the appellants to assail the impugned judgments is not meritorious and accordingly rejected.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs. As a natural corollary, Civil Revision No. 3482 of 2014 is dismissed having rendered infructuous.

(Rekha Mittal)
Judge

14.10.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No